IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.481 OF 2005
IN
FIRST APPEAL NO.801 OF 2003

Smt.Neelima S.Sansar ...Applicant

vs.

M/s.Dwelling House Construction & Ors. ...Respondents

Mr.K.K.Tated for the Applicant
Mr.Hetal Patel for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : NOVEMBER 27,2007.

P.C.:

1. Heard the Advocate for the Applicant and the Advocate for the first Respondent. As per the order dated 9th March 2007, the first Respondent has deposited a sum of Rs.1,88,030/- in this Court. The Applicant prays for grant of permission to withdraw the said amount. The Application is opposed by the learned counsel for the first Respondent by pointing out that the suit filed by the Applicant in the trial court in substance is for specific performance of the agreement for sale of the suit flat. The learned Counsel for the first Respondent submitted that withdrawal of the amount by the Applicant will be contrary to the stand taken by the Applicant that she has been always ready and willing to perform her part of the suit agreement.

2. I have considered the submissions. It is obvious that the Applicant is seeking withdrawal of the amount at her own risks. At the time of final hearing of the Appeal, the first Respondent can always make a submission on the conduct of the Applicant of withdrawing the amount. A suit for specific performance filed by the Applicant has been dismissed and therefore, if the Applicant withdraws the amount which was paid by her to the first Respondent under the suit agreement, possibly the first Respondent cannot have any objection.

3. Hence, Application is disposed of by directing that the amount of Rs.1,88,030/- deposited by the first Respondent shall be paid to the Applicant. It is made clear that the withdrawal of the amount by the Applicant will be on her own risk.

4. It is clarified that if the amount is invested in the fixed deposit, the Applicant will be permitted to withdraw the interest accrued on the said amount.

5. All contentions of the parties on merits of the Appeal are expressly kept open.

6. Application is disposed of accordingly.

JUDGE